

BUSINESS AND GOVERNMENTAL	:	
INSURANCE AGENCY,	:	
	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
V.	:	
	:	DECISION
BOARD OF EDUCATION OF THE	:	
TOWNSHIP OF UNION, UNION COUNTY,	:	
AND WILLIS OF NEW JERSEY, INC.	:	
	:	
RESPONDENT.	:	
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SYNOPSIS

The petitioner – Business and Governmental Insurance Agency, which agency had provided services to the Union Township School District for twenty-three years – challenged the determination of the respondent Board to award a contract for insurance brokerage services to Willis of New Jersey (Willis). Petitioner initially filed an appeal in October 2016, along with a motion for emergent relief, arguing that the Board had not followed proper bidding procedures when it awarded a contract to Willis – which had submitted a proposal for insurance brokerage services in September 2016, well beyond the March 15, 2016 deadline for submission of proposals. Petitioner’s motion for emergent relief was subsequently granted, and the Board was directed to rescind the contract with Willis of New Jersey and either award a contract for insurance brokerage services to one of the four vendors who submitted timely responses to the request for proposals (RFP), or reject all of the proposals pursuant to *N.J.S.A. 18A:18A-22*. The Board ultimately rescinded its contract with Willis, rejected all other proposals in order to substantially revise its specifications for the services, and filed a motion to dismiss the petition – contending that the grant of emergent relief had satisfied the demands in petitioner’s appeal, and therefore the matter is now moot. Willis filed a similar motion to dismiss.

The ALJ found, *inter alia*, that: the Board complied with the emergent relief order by terminating and rescinding the contract with Willis; pursuant to *N.J.S.A. 18A:18A-22*, a board may reject all bids in order to substantially revise the specifications contained in the RFP; in this matter, it is evident that the Board made substantial revisions to the specifications with respect to the scope of services to be rendered in the second RFP; petitioner’s contention that there were no substantial changes is without merit; there is no requirement for a board of education to provide a certification of reasons when it rejects all bids pursuant to *N.J.S.A. 18A:18A-22*, and petitioner’s request for respondent to provide such certification is without merit; likewise, petitioner’s contention that Willis should be required to disgorge any and all commissions it received from the Board from the time of the award to its rescission is without merit, as the equities of the situation do not support petitioner’s request for disgorgement. Accordingly, the ALJ granted the motions to dismiss of both respondents, with prejudice.

Upon full review and consideration of the record in this matter, the Commissioner concurred with the findings and conclusions of the ALJ, and adopted the Initial Decision as the final decision in this matter for the reasons well expressed therein. The petition was dismissed as moot.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

OAL DKT. NO. EDU 16782-16
AGENCY DKT. NO. 284-10/16

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioner – Business and Governmental Insurance Agency – and the replies thereto submitted by the Union Township Board of Education (Board) and Willis of New Jersey, Inc. (Willis).

Petitioner takes exception to the Administrative Law Judge’s (ALJ) conclusion that the equities of the situation did not support petitioner’s request for disgorgement. In its exceptions, petitioner argues that the ALJ previously found in the Order Granting Emergent Relief that there were “indications of collusion and favoritism” when – according to Willis – the Board asked it to submit a proposal. Petitioner urges the Commissioner to find that disgorgement is an appropriate remedy because the Initial Decision conflicts with the reasoning in the Order Granting Emergent Relief – which was adopted by the Commissioner – and it is inconsistent to find that the equities do not support disgorgement after already finding that collusion and favoritism exist.

Petitioner also argues that the ALJ erred in finding that it did not mention disgorgement as a form of relief in the petition. Instead, petitioner explains that it included a catch-all prayer of relief, and that pursuant to *N.J.A.C. 1:1-6.2*, pleadings may be freely amended. Petitioner also points out that it raised the demand for disgorgement in its opposition to the Motions to Dismiss filed by the Board and Willis and at the hearing in this matter.

Finally, petitioner takes exception to the ALJ's conclusion that the Board complied with the Order Granting Emergent Relief. Petitioner contends that the Board's decision to reject all bids was arbitrary, capricious and unreasonable because it did not "substantially revise" the specifications for the goods or services as is required to reject all bids under *N.J.S.A. 18A:18A-22(d)*. Petitioner argues that it seems suspicious that the Board would find the specifications in need of revision ten months after the responses to the Request for Proposals were initially due, especially after it previously argued that Willis was substantially performing the contract. Accordingly, petitioner argues that the Initial Decision should be rejected.

In reply, the Board argues that the ALJ properly found that it rejected all proposals to substantially revise the specifications, in accordance with *N.J.S.A. 18A:18A-22(d)*, and that it did in fact revise the specifications. In support, the Board explained the many differences between the original specifications and revised specifications, and argues that the ALJ properly found it evident that there were substantial revisions. Additionally, the Board contends that it complied with the Order Granting Emergent Relief, as it terminated and rescinded the contract with Willis and rejected the other four proposals in order to substantially revise the specifications. The Board argues that, contrary to petitioner's arguments, it satisfied the requirements of *N.J.S.A. 18A:18A-22*. The Board also argues that the petitioner's arguments

about collusion between the Board and Willis are irrelevant because the statute does not require the Board to explain its rejection of bids. As such, the Board argues that the ALJ properly found this matter is moot and should be dismissed.

Willis argues – in reply to petitioner’s exceptions – that the Initial Decision should be adopted by the Commissioner. Specifically, Willis contends that the ALJ properly found that the equities do not support petitioner’s claim for disgorgement by Willis. Willis points out that the ALJ never made a finding that there was evidence of collusion and favoritism between the Board and Willis. Although the ALJ stated in dicta that there were indications of collusion and favoritism based on the Board’s request for Willis to submit a proposal months after they were due, the ALJ ultimately found that the suggestion of favoritism was not supported as Willis provided the services and should receive compensation. Willis makes clear that its conduct was appropriate from the start; Willis simply complied with the Board’s request for it to submit a proposal. Willis also emphasizes that there is no evidence in the record that it ever had any unfair advantage in the preparation of its bids. Procedurally, Willis contends that the ALJ properly found that petitioner did not request disgorgement in its prayer for relief, as courts have found that generalized, catch-all prayers for relief are insufficient. Substantively, Willis maintains that it performed the services for the Board in good faith and it would be inequitable for it to be deprived of its fair compensation. As such, the ALJ appropriately denied petitioner’s request for disgorgement.

Willis also contends that the Board complied with the Order Granting Emergent Relief as it terminated Willis, rejected the remaining bids, and substantially revised the specifications. Willis emphasizes that the revised RFP contained multiple substantive changes, which aimed to expand and alter the scope of services. Willis asserts that petitioner’s argument

in its exceptions – that it is suspicious that the Board would find that the specifications were inadequate and in need of revision after it already found that Willis substantially performed the contract – misses the point. Whether Willis substantially performed the initial RFP bears no relation to whether the revised RFP expanded the scope of its work. Accordingly, Willis argues that the ALJ appropriately found that the Board complied with *N.J.S.A. 18A:18A-22* and the Order Granting Emergent Relief.

Upon a comprehensive review of the record, the Commissioner agrees with the ALJ that respondent complied with the Order Granting Emergent Relief. The Board terminated and rescinded the contract with Willis, as it was directed to do. Further, in accordance with *N.J.S.A. 18A:18A-22*, a board may reject all bids in order to substantially revise the specifications for the requested goods or services. The Commissioner agrees with the ALJ that the Board made substantial revisions to the specifications from the first to the second RFP, including: (1) the items required for submission with the RFP; (2) the term length; (3) the fee arrangement; (4) the scope of services to be rendered; (5) the criteria used to evaluate proposals; (6) the submission of detailed broker information; (6) the years of experience required in insurance brokerage services; and (7) the requirements for personnel assigned to provide services. It is clear that there were numerous substantial revisions to the RFP and, therefore, the Board acted in accordance with *N.J.S.A. 18A:18A-22* when it rejected the remaining proposals and substantially revised the specifications. The Commissioner does not find petitioner's exceptions to be persuasive. Petitioner has not demonstrated that the Board acted in an arbitrary, capricious or unreasonable manner, or that it only made the substantial revisions to the specifications as a ruse to enable it to award the contract to Willis.

Additionally, the Commissioner concurs with the ALJ that the equities of this matter do not support petitioner's request for disgorgement. Willis provided the services under the contract and should receive just compensation. The Commissioner further agrees with the ALJ that if disgorgement were to be ordered, the Board would receive the benefit of not paying for the services provided, and there is no equitable reason for the Board to receive that benefit.

Accordingly, for the reasons thoroughly expressed therein, the Initial Decision is adopted as the final decision in this matter and the petition is hereby dismissed as moot.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: August 14, 2017

Date of Mailing: August 14, 2017

* This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 16782-16

AGENCY DKT. NO. 284-10/16

**BUSINESS AND GOVERNMENTAL
INSURANCE AGENCY,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE
TOWNSHIP OF UNION, UNION COUNTY,
AND WILLIS OF NEW JERSEY, INC.,**

Respondents.

Christopher K. Harriott, Esq., for petitioner (Florio Kenny Raval, attorneys)

Paul E. Griggs, Esq., for the Board of Education of the Township of Union
(Sciarrillo Cornell Merlino McKeever & Osborne, attorneys)

Robert A. Mintz, Esq., for Willis of New Jersey, Inc. d/b/a Willis Towers Watson
(McCarter & English, attorneys)

Record Closed: June 30, 2017

Decided: June 30, 2017

BEFORE **RICHARD McGILL**, ALJ:

Business and Governmental Insurance Agency (“petitioner”) filed a petition with the Commissioner of Education, challenging a determination by the Board of Education of the Township of Union (“respondent”) to award a contract for insurance brokerage services to Willis of New Jersey, Inc. d/b/a Willis Towers Watson (“Willis”). Respondent and Willis now move to dismiss the petition as moot.

PROCEDURAL HISTORY

Petitioner filed its petition with the Department of Education on October 31, 2016, pursuant to the authority of the Commissioner of Education under N.J.S.A. 18A:6-9 to hear and determine controversies and disputes arising under the school laws. In conjunction with the petition, petitioner filed a motion for emergent relief.

The matter was transmitted to the Office of Administrative Law on November 3, 2016, for determination as a contested case. An oral argument in regard to petitioner’s motion for emergent relief was conducted on November 21, 2016, at the Office of Administrative Law in Newark, New Jersey. The undersigned’s Order on Motion for Emergent Relief dated November 29, 2016, granting petitioner’s motion for emergent relief, was adopted by the Commissioner in a Decision on Application for Emergent Relief dated December 12, 2016.

On February 1, 2017, respondent filed a motion to dismiss the petition contending in essence that the emergent relief had granted the relief requested in the petition and that the matter is now moot. On the same date, Willis filed a motion to dismiss the petition as moot for substantially the same reasons as advanced by respondent.

On February 17, 2017, petitioner filed its opposition to the motions to dismiss. Petitioner’s two main arguments are that respondent failed to comply with the order granting emergent relief and that petitioner is now seeking additional relief which was

not specifically mentioned in the petition. Both respondent and Willis submitted replies to the opposition.

MOTIONS TO DISMISS

A. Background

There is no real dispute as to the general course of events in this matter. In early 2016, respondent issued a Request for Proposal for Insurance Brokerage Services. In regard to the timing of any proposal, the request states as follows: “Proposal shall be submitted no later than MARCH 15, 2016. . . . Proposals will be opened . . . at 11:00 a.m. on MARCH 15, 2016. Your proposal must be received prior to that date and time.” On March 15, 2016, petitioner submitted a fully responsive proposal. In addition, timely proposals were submitted by three other vendors including Brown & Brown Metro, LLC, Atlantic Associates Insurance Agency, Inc., and Arthur J. Gallagher & Co. Petitioner had provided the services in question for twenty-three years.

Willis submitted a proposal in or about September 2016. On September 20, 2016, respondent adopted a resolution to accept the proposal of Willis. Prior thereto, respondent did not receive consent to extend the deadline to award the contract beyond the sixty days set forth in N.J.S.A. 18A:18A-36. Further, respondent did not take any action to reject the proposals of petitioner and the other vendors that submitted timely responses. On October 5, 2016, petitioner received notice from Flagship Dental Plans, a third party provider of dental benefits, that petitioner was removed as broker of record for respondent effective October 1, 2016.

In the Order on Motion for Emergent Relief dated November 29, 2016, a determination was made that petitioner met all requirements for emergent relief. One requirement for emergent relief is that petitioner has demonstrated a likelihood of prevailing on the merits of the underlying claim. N.J.A.C. 6A:3-1.6(b)3. It is noteworthy that the determination was made that the lateness of the proposal by Willis by five to six

months was an obvious and gross defect in the proposal that was disregarded by respondent. As relief, it was ordered that: (1) “The contract between respondent and Willis be rescinded and deemed null and void” and (2) “Respondent may award the contract for insurance brokerage services to any of the four vendors who submitted timely responses to the request for proposals or reject all of the proposals if the circumstances satisfy the criteria in N.J.S.A. 18A:18A-22.”

On December 13, 2016, respondent approved a resolution terminating and rescinding the contract with Willis effective December 31, 2016. On the same date, respondent approved a resolution rejecting the proposals submitted by Atlantic Associates Insurance Agency, Inc., Business and Governmental Insurance Agency, A.J. Gallagher and Company and Brown and Brown Metro because respondent wanted to substantially revise the specifications for the services.

B. Analysis

Respondent and Willis seek dismissal of the petition on the basis of mootness. Courts normally will not entertain cases when a controversy no longer exists, and the disputed issues have become moot. DeVesa v. Dorsey, 134 N.J. 420, 428 (1993). A case is moot when the original issue presented has been resolved. Ibid. Likewise, an issue is moot when the decision sought in the matter can have no practical effect on the existing controversy. Greenfield v. N.J. Dep’t of Corr., 382 N.J. Super. 254, 257-58 (App. Div. 2006). The concept of mootness has been applied to cases before the Commissioner of Education, e.g., Price v. Bd. of Educ. of Washington Twp., OAL Dkt. No. EDU 6121-07, Initial Decision (December 7, 2007), adopted, Comm’r, (January 23, 2008).

In its petition, petitioner requested relief as follows:

- (a) Enjoining UBOE from awarding and/or proceeding with any contract for “2016 Request for Proposal for Insurance Brokerage Services”;

- (b) Rescinding any contract for 2016 Request for Proposal for Insurance Brokerage Services which has already been awarded by UBOE to Willis Insurance;
- (c) Requiring the UBOE to award the 2016 contract for Insurance Brokerage Services to one of the four (4) vendors who submitted timely response to the RFP;
- (d) Granting such other relief as the Commissioner deems equitable and just.

In regard to petitioner's contention that respondent failed to comply with the order granting emergent relief, it is evident that the first and second items were granted as emergent relief and that respondent in fact terminated and rescinded the contract in question with Willis. The third type of relief was also granted with an alternative recognizing respondent's right to reject all bids. In accordance with N.J.S.A. 18A:18A-22(d), a board of education may reject all bids when it wants to substantially revise the specifications for the goods or services. Petitioner maintains that respondent failed to comply with the Order Granting Emergent Relief in that there was no substantial revision to the specifications. Additionally, petitioner seeks a requirement for respondent to provide a certification of reasons for the rejection of all bids.

In support of their motions, respondent and Willis detailed differences between the first and second requests for proposals. From a review of these submissions, it is evident that there were substantial revisions from the first to the second request for proposals particularly with respect to the scope of services to be rendered. It follows that respondent has not failed to comply with the Order Granting Emergent Relief with respect to N.J.S.A. 18A:18A-22. Further, there is no requirement for a board of education to provide a certification of reasons when it rejects all bids pursuant to N.J.S.A. 18A:18A-22. It follows that petitioner's argument that respondent failed to comply with the Order Granting Emergent Relief is without merit.

The fourth type of relief requested in the petition is "such other relief as the Commissioner deems equitable and just." Petitioner's second contention is that Willis should be required to disgorge any and all commissions that it received under the non-

rescinded contract. In support of this contention, petitioner argues that strong remedies are required to deter improper conduct by public officials in the context of public bidding. Further, as a matter of equitable principles, a wrongdoer should be relieved of profits. Since the contract was improperly awarded to Willis, it should be required to disgorge any commissions earned from the time of the award to its rescission.

Willis argues that disgorgement was not included in the relief sought in the petition and that there has been no finding of improper conduct or wrongdoing by Willis. Further, Willis has provided the services in question and should receive the associated fees. Disgorgement would be unfair to Willis and would unjustly enrich respondent. Willis refers to the concept of quantum meruit as a form of quasi-contractual recovery that rests on the principle that a person should not be allowed to enrich himself unjustly at the expense of another.

Here, the equities of the situation do not support petitioner's request for disgorgement. First, petitioner did not mention disgorgement as a form of relief in its petition. Second, strong action has been taken in this case in that the contract in question was terminated and rescinded by respondent as required the Order Granting Emergent Relief. Third, Willis has provided the services in question and should receive just compensation. Fourth, there is no equitable reason for respondent to receive the benefit of disgorgement. It follows that petitioner's argument is without merit.

Accordingly, it is **ORDERED** that:

1. Respondent's motion to dismiss the petition in this matter with prejudice as moot be granted.
2. The motion of Willis to dismiss the petition in this matter with prejudice as moot be granted.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

June 30, 2017



DATE

RICHARD McGILL, ALJ

Date Received at Agency:

June 30, 2017

Date Mailed to Parties:

ljb